



STATE OF INDIANA

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November 7, 2012

Lori L. Caldwell
1433 E. 83rd Avenue
Merrillville, Indiana 46410

Re: Formal Complaint 12-FC-304; Alleged Violation of the Access to Public Records Act by the Lake Station Police Department

Dear Mr. Caldwell:

This advisory opinion is in response to your formal complaint alleging the Lake Station Police Department (“Department”) violated the Access to Public Records Act (“APRA”), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Department. As of today’s date we have yet to receive a response.

BACKGROUND

In your formal complaint, you allege that on October 9, 2012, you went to the Department and asked to see a copy of the daily log. A Department employee orally responded to your request and inquired as to your identity. You advised the employee that under the APRA, you were not required to identify yourself in order to view a public record. The employee then inquired what the daily log was, to which you provided a copy of the I.C. 5-14-3-5. You were informed that the dispatcher maintained the information on her computer, at which point you again requested an opportunity to inspect the daily log. Your request was denied. The dispatcher contacted the Sergeant, who stated that you must submit your request to the Lieutenant in order to see the daily log. You were informed that the Lieutenant might not be in all week. You thereafter left without any information.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *See* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are

excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

The APRA requires that certain law enforcement records be made available for inspection and copying. *See* I.C. § 5-14-3-5. In this regard, information must be made public in three instances: if a person is arrested or summoned for an offense, if a person is received in a jail or lock-up, and where an agency has received a call regarding a suspected crime, accident, or complaint. *Id.* I.C. § 5-14-3-5(a) provides that if a person is arrested or summoned for an offense, the following information shall be made available for inspection and copying:

- (1) Information that identifies the person including the person's name, age, and address.
- (2) Information concerning any charges on which the arrest or summons is based.
- (3) Information relating to the circumstances of the arrest or the issuance of the summons, such as the:
 - (A) time and location of the arrest or the issuance of the summons;
 - (B) investigating or arresting officer (other than an undercover officer or agency); and
 - (C) investigating or arresting law enforcement agency.

If a person is received in a jail or lock-up, I.C. § 5-14-3-5(b) provides that the following information shall be made available for inspection and copying:

- (1) Information that identifies the person including the person's name, age, and address.
- (2) Information concerning the reason for the person being placed in the jail or lock-up, including the name of the person on who order the person is being held.
- (3) The time and date that the person was received and time and date of the person's discharge or transfer.
- (4) The amount of the person's bail or bond, if it has been fixed.

Finally, I.C. § 5-14-3-5(c) obligates law enforcement agencies to maintain a daily log that lists suspected crimes, accidents, or complaints. *See* I.C. § 5-14-3-5(c). The following information must be maintained in the daily log:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency.
- (2) The time and nature of the agency's response to all complaints or requests for assistance.
- (3) If the incident involves an alleged crime or infraction:
 - (A) the time, date, and location of occurrence;
 - (B) the name and age of any victim, unless the victim is a victim of a crime under IC 35-42-4 or IC 35-42-3.5;
 - (C) the factual circumstances surrounding the incident; and



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(D) a general description of any injuries, property, or weapons involved.

Counselor Neal provided the following guidance regarding a law enforcement agency's requirements pursuant to I.C. § 5-14-3-5(c):

In some instances, a law enforcement agency will not maintain a separate record titled "daily log" but will instead use the daily incident reports to substitute for the daily log. In that case, when the agency receives a request for the daily log information, the agency will generally provide copies of incident reports. In some cases, the agency will redact from the incident report any information not required to be maintained in a daily log. I have advised agencies this is acceptable so long as the daily log information is always available within twenty-four hours and so long as the agency provides at least the information which is required by I.C. § 5-14-3-5(c) to be made available for inspection and copying. *Opinion of the Public Access Counselor 09-FC-93.*

As applicable here, the Department is law enforcement agency that is required to comply with the requirements of I.C. § 5-14-3-5. Without the benefit of a response from the Department to your formal complaint, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f), (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1. Generally, the APRA does not require that a requestor must first produce identification prior to the disclosure of a public record by the agency. *See Opinions of the Public Access Counselor 04-FC-167; 10-FC-174; 12-FC-202.* Further, the APRA does not provide that a law enforcement agency may withhold access to the daily log in light of a specific employee not being available to receive the request. I.C. 5-14-3-5(c) provides that the log must be created not later than twenty-four hours after the suspected crime, accident or complaint that has been reported to the agency. As the Department has not provided a justification for withholding the daily log for your review, it is my opinion that the Department violated the APRA.

CONCLUSION

Based on the foregoing, it is my opinion that the Department violated the APRA by failing to comply with the requirements of I.C. § 5-14-3-5 in response to your request.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Lake Station Police Department